

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-14114
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT October 1, 2008 THOMAS K. KAHN CLERK
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D.C. Docket No. 06-00043-CR-WCO-2

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

JOHNNY CLAUDE SLATON,
a.k.a. Johnny Claude Cooper,
a.k.a. Johnny Cooper, etc.,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(October 1, 2008)

Before CARNES, BARKETT and PRYOR, Circuit Judges.

PER CURIAM:

Johnny Slaton appeals his low-end, guideline range 188-month sentence for being a felon in possession of a firearm. At sentencing, Slaton requested that the district court exercise its authority to impose a sentence that would run concurrent to his undischarged state court sentence pursuant to U.S.S.G. § 5G1.3, but the district court refused to designate the sentence as concurrent or consecutive based on its conclusion that the Bureau of Prisons, not the court, was authorized to make the determination and that § 5G1.3 did not apply. As imposed, Slaton's sentence runs consecutive to his state court sentence by statute.

Having reviewed the record and the briefs of the parties, we conclude that the district court erred in its failure to recognize its authority to impose Slaton's sentence as running concurrent to his state sentence under 18 U.S.C. § 3584 and in its refusal to consider subparagraph (c) of § 5G1.3 in fashioning Slaton's sentence. Under § 3584, the district court may order multiple terms of imprisonment imposed at different times to run concurrently. 18 U.S.C. § 3584(a). In determining whether to impose a concurrent or consecutive sentence, the district court must consider the factors set forth in 18 U.S.C. § 3553(a), which incorporate U.S.S.G. § 5G1.3. See United States v. Ballard, 6 F.3d 1502, 1505–06 (11th Cir. 1993).

Accordingly, we vacate Slaton's sentence and remand his case to the district

court for resentencing.

VACATED AND REMANDED.